IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

Crl. Rev. Pet. No. 699 of 2006

CRA.81/2001 of II ADDL.SESSIONS COURT, KOLLAM
CC.671/1997 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVOOR
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REVN. PETITIONER/APPELLANT/ACCUSED:

CHANDRA BOSE, S/O. SUKUMARAN,
VATTACHANIL VEEDU, OZHUKUPARA,
NEDUNGOLAM, KOLLAM.

BY ADV. SRI. C. RAJENDRAN

RESPONDENT/RESPONDENT/COMPLAINANT/STATE:
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1. **RADHAMMA AMMA, KOMACHAZHIKAOM,**
   POZHIKKARA, S. PARAVUR VILLAGE.

2. **STATE OF KERALA, REPRESENTED BY THE**
   PUBLIC PREOSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

   BY ADV. SRI. G. BHAGAVAT SINGH
   PUBLIC PROSECUTOR SRI. C.K. SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

Crl. R.P. No. 699 OF 2006

Dated this the 8th day of March, 2007

O R D E R

The revision petitioner was convicted and sentenced under Section 138 of the Negotiable Instruments Act (Act, for short) to undergo simple imprisonment for six months and to pay compensation of Rs. 7,500/- to the complainant under Section 357(3) of the Code of Criminal Procedure. The conviction and sentence passed by the Magistrate's Court were confirmed by the lower appellate court. Hence this revision.

2. According to prosecution, revision petitioner borrowed an amount of Rs. 7,500/- from the complainant and issued a cheque Exhibit P1 for ensuring discharge of the debt. The cheque, on presentation to the bank, was dishonoured and after complying with the legal formalities under the Act, a complaint was lodged against the revision petitioner. The complainant examined PWs 1 and 2 and marked Exhibits P1 to P7 on her side. The accused examined DWs 1 to 3 and marked Exhibit D1.

3. On an analysis of the evidence on record, both the courts concurred in the finding that respondent-complainant proved that the accused committed an offence under Section 138 of the Act. It was held that the amount borrowed is not disputed and the issuance of the cheque is also not disputed. The case of revision petitioner is one of partial discharge by way of Ext. D1. It is contended that Rs. 5,000/- was paid out of Rs. 7,500/- and Ext. D1 was issued by the complainant to prove partial discharge. The case

set up by the accused was found against by both the courts. The revision petitioner is challenging the above findings, conviction and sentence.

4. According to learned counsel appearing for revision petitioner, the amount of Rs. 5,000/- was paid as evidenced by Ext. D1 receipt issued by the complainant and that the findings to the contrary are not correct. Since the amount is allegedly repaid, the argument is that no offence will be made out. On a reading of Section 138 of the Act, this argument cannot be accepted. As per Section 138 of the Act, if any cheque is drawn by a person for the discharge of a debt or liability on an account maintained by him with a banker and it is returned by the bank unpaid for the reason that money standing to the credit of that account is insufficient to honour the cheque, the accused will be deemed to have committed the offence. Therefore, what is relevant under Section 138 of the Act and what is required to be proved by the complainant is that the cheque is drawn on an account maintained by the accused with the banker for payment of any amount of money to another person (complainant in this case) from out of that account for the discharge, in whole or in part, of any debt or other liability.

5. The drawing of the cheque is important. So also, the dishonour and the reason for dishonour. But, once the cheque is drawn from the account maintained by the accused with a banker for the discharge of a debt or liability and it is returned unpaid since there is no sufficient funds in the account, an offence can be deemed to have been committed. The partial discharge will not wash the offence. But, there is nothing in Chapter XVII of

the Act to show that no criminal liability will arise or that an offence under Section 138 will not be made out, if the accused discharge either partly or completely the debt after the period mentioned in Section 138(c). If the accused fails to make payment of the amount to the payee or to the holder in due course of the cheque within 15 days of receipt of the notice issued under Section 138(b), offence under Section 138 will be made out.

6. The discharge of the amount stated in the cheque has to be made by the drawer within the period stated in Section 138(c) to exonerate the accused from the penal liability under Section 138. If the payment of money stated in the cheque is not paid within such time as referred to in Section 138(c), the alleged discharge subsequent to such period is of no consequence as far as the criminal liability of the accused is concerned. The discharge has to be made within such period as referred to in Section 138(c) and then alone such discharge will have any effect on the deeming of the commission of offence under Section 138.

7. In this case, even if the entire case of the accused is accepted, it cannot be said that the accused paid the amount within the period prescribed under Section 138(c) of the Act. According to revision petitioner, the amount was paid on 25.10.1997, the date on which Ext. D1 was executed, ie, within 15 days of receipt of the notice. As per the complaint, notice was received by the accused on 13.10.1997. But, the said fact also cannot absolve the petitioner of his liability for the offence under Section 138, since the expression used in Section 138(c) is "make the payment of the said amount

of money". "The said amount of money referred" to in Section 138(c) is the money stated in the cheque. Therefore, the alleged partial discharge of the amount covered by the cheque will not be sufficient to hold that offence under Section 138 of the Act is not made out. It is therefore, unnecessary to consider the controversy relating to the fact whether Ext. D1 is a forged document or not, since even if the execution of Ext. D1 and the partial discharge is accepted as true, it will be of no consequence as far as the offence under Section 138 is concerned.

8. As held by the courts below, the fact that the accused borrowed an amount of Rs. 7,500/- and that he has to pay the said amount to the complainant at the time of drawing of the cheque is not disputed. The fact that Ext. P1 was issued for the discharge of a debt is thus proved. There is no error in other findings regarding dishonour, insufficiency of fund etc. Therefore, the offence under Section 138 stands proved and I do not find any reason to interfere with the conviction. The sentence imposed is to undergo simple imprisonment for six months and to pay compensation of Rs. 7,500/- under Section 357(3) of the Code of Criminal Procedure.

9. Learned counsel appearing for revision petitioner submitted that the petitioner is prepared to pay Rs. 15,000/- under Section 357(3) of the Code and requested that the imprisonment may be reduced till raising of the court. On hearing both sides, I find that the request can be accepted, on the facts and circumstances of the case. Hence, the conviction is confirmed, but the sentence is modified as follows.

The revision petitioner is sentenced under Section 138 of the Negotiable Instruments Act to undergo imprisonment till raising of the court and to pay compensation of Rs. 15,000/- to the complainant under Section 357(3) of the Code and in default to undergo simple imprisonment for six months.

This petition is partly allowed.

K. HEMA, JUDGE.

smp